

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

<b>VERSATA SOFTWARE, INC., F/K/A</b>	§	
<b>TRILOGY SOFTWARE, INC.; and</b>	§	
<b>VERSATA DEVELOPMENT GROUP,</b>	§	
<b>INC., F/K/A TRILOGY DEVELOPMENT</b>	§	
<b>GROUP, INC.</b>	§	
	§	
<b>Plaintiffs,</b>	§	
<b>v.</b>	§	<b>CIVIL ACTION NO. 11-cv-00497</b>
	§	
<b>TOYOTA MOTOR CORPORATION;</b>	§	
<b>TOYOTA CAELUM, INC.;</b>	§	
<b>TOYOTA CAELUM USA, INC.;</b>	§	
<b>TOYOTA MOTOR SALES, U.S.A., INC.;</b>	§	
<b>MARSHALL IMPORT AUTOMOTIVE L.P. ;</b>	§	
<b>MARSHALL IMPORT</b>	§	
<b>AUTOMOTIVE GP, INC.;</b>	§	
<b>MARSHALL TOYOTA; MARSHALL SCION;</b>	§	
<b>EDDIE ROBBINS, INC.;</b>	§	
<b>TOYOTA OF LONGVIEW;</b>	§	
<b>and SCION OF LONGVIEW.</b>	§	
	§	
<b>Defendants.</b>	§	<b>JURY TRIAL DEMANDED</b>
	§	

**PLAINTIFFS' FIRST AMENDED COMPLAINT**

Plaintiffs Versata Software, Inc., f/k/a Trilogy Software, Inc. and Versata Development Group, Inc., f/k/a Trilogy Development Group, Inc. (collectively "Versata") file this First Amended Complaint for patent infringement against Defendants Toyota Motor Corporation, Toyota Caelum, Inc., Toyota Caelum USA, Inc., Toyota Motor Sales, U.S.A., Inc., Marshall Import Automotive, L.P., doing business as Marshall Toyota and Marshall Scion, Marshall

Import Automotive GP, Inc., and Eddie Robbins, Inc., doing business as Toyota of Longview and Scion of Longview (collectively “Toyota”).

**PARTIES**

1. Plaintiff Versata Software, Inc., f/k/a Trilogy Software, Inc., is a corporation existing under the laws of Delaware with its principal place of business at 6011 W. Courtyard Austin, Texas, 78730.

2. Plaintiff Versata Development Group, Inc., f/k/a Trilogy Development Group, Inc., is a corporation existing under the laws of Delaware with its principal place of business at 6011 W. Courtyard, Austin, Texas, 78730.

3. Toyota Motor Corporation is a corporation existing under the laws of Japan with its principal place of business at 1 Toyota-Cho, Toyota City, Aichi Prefecture 471-8571, Japan.

4. Toyota Caelum Inc. is a corporation existing under the laws of Japan. It may be served through its registered agent for service of process, Tetsu Ishihara, 2001 Gateway Pl Ste 700W, San Jose California 95110.

5. Toyota Caelum USA, Inc. is a California corporation. It may be served through its registered agent for service of process, Corporation Service Company d/b/a CSC – Lawyers Incorporating Service, 2730 Gateway Oaks Dr., Ste 100, Sacramento California, 95833.

6. Toyota Motor Sales U.S.A., Inc. is a California corporation. It may be served through its registered agent for service of process, C T Corporation System, 350 N. St. Paul St., Ste. 2900, Dallas, Texas, 75201.

7. Marshall Import Automotive L.P. is a Texas limited partnership doing business as Marshall Toyota and Marshall Scion. It may be served through its registered agent for service of process, Christopher B. Elliot, 2055 Burton Rd., Mount Pleasant, Texas, 75455.

8. Marshall Import Automotive GP, Inc. is a Texas corporation. It may be served through its registered agent for service of process, Christopher B. Elliot, 2055 Burton Rd., Mount Pleasant, Texas, 75455.

9. Eddie Robbins, Inc. is a Texas Corporation doing business as Toyota of Longview and Scion of Longview. It may be served through its registered agent for service of process, Eddie E. Robbins, 1400 W. Loop 281, Longview, Texas, 75604.

### **JURISDICTION AND VENUE**

10. This is an action for patent infringement under the Patent Laws of the United States, 35 U.S.C. § 271.

11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

12. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and 1400(b).

### **SUMMARY**

13. In September 2010, through merger transaction, a Versata affiliate, ESW Capital, LLC, acquired Think3, Inc., which developed the revolutionary “ThinkDesign” software suite. Think3’s “ThinkDesign” and sister software products (including “ThinkCode,” “TDPLM,” “ThinkTeam” and others) offer computer-aided design and product life cycle management capabilities that are particularly useful in designing and manufacturing parts for automobiles. Because of the exceptional value of this software in the automotive industry, many of the largest auto manufacturers in the world are Think3 customers, including Toyota.

14. A Versata affiliate, Versata FZ, LLC, owns all of the Think3 software (ThinkDesign and the related sister software products), and is the only authorized supplier of the Think3 software. In addition, Versata holds patents that cover every aspect of the

“ThinkDesign” functionality. But despite knowing that Versata and its affiliate are the sole owners of these intellectual property rights, Toyota recently began purchasing, using, and distributing unlicensed versions of ThinkDesign from an Italian company. Although this Italian company uses the “Think3” name on its website, it is not affiliated with Versata, Versata FZ, LLC or Think3 and has no legal right to distribute “ThinkDesign” software.

15. Toyota has received ample notice that these versions of the software are unauthorized and violate Versata’s intellectual property rights. Despite this, Toyota has refused to stop using this software or purchase valid licenses.

16. In addition to this, Toyota offers designs that are infringing Versata-owned patents by offering “Build Your Toyota” functionality to customers on its websites.

### **FACTS**

17. On October 27, 1998, the United States Patent and Trademark Office (“USPTO”) duly and legally issued United States Patent No. 5,825,651 (“the ‘651 patent”), entitled “Method and Apparatus for Maintaining and Configuring Systems.” Versata holds all right, title, and interest in and to the ‘651 patent (a true and correct copy of which is attached hereto as Exhibit A).

18. On June 11, 2002, the USPTO duly and legally issued United States Patent No. 6,405,308 (“the ‘308 patent”), entitled “Method and Apparatus for Maintaining and Configuring Systems.” Versata holds all right, title, and interest in and to the ‘308 patent (a true and correct copy of which is attached hereto as Exhibit B).

19. On January 6, 2004, the USPTO duly and legally issued United States Patent No. 6,675,294 (“the ‘294 patent”), entitled “Method and Apparatus for Maintaining and Configuring

Systems.” Versata holds all right, title, and interest in and to the ‘294 patent (a true and correct copy of which is attached hereto as Exhibit C).

20. On March 6, 2007, the USPTO duly and legally issued United States Patent No. 7,188,335 (“the ‘335 patent”), entitled “Product Configuration using Configuration Patterns.” Versata holds all right, title, and interest in and to the ‘335 patent (a true and correct copy of which is attached hereto as Exhibit D).

21. On April 3, 2007, the USPTO duly and legally issued United States Patent No. 7,200,583 (“the ‘583 patent”), entitled “Method and Apparatus for Attribute Selection” Versata holds all right, title, and interest in and to the ‘583 patent (a true and correct copy of which is attached hereto as Exhibit E).

22. On November 30, 2010, the USPTO duly and legally issued United States Patent No. 7,844,919 (“the ‘919 patent”), entitled “Method and Apparatus for Attribute Selection” Versata holds all right, title, and interest in and to the ‘919 patent (a true and correct copy of which is attached hereto as Exhibit F).

23. Upon information and belief, Toyota makes, uses, sells, offers for sale, or imports into the State of Texas, in this judicial district, and elsewhere within the United States “Build your Toyota” functionality available through Toyota’s website which infringes the ‘651, ‘308, ‘294, and ‘919 patents, as well as related services.

24. Upon information and belief Toyota makes, uses sells, offers for sale, or imports within the United States software, including ThinkDesign Suite, as well as related services which infringe the ‘308, ‘294, ‘335, and ‘583 patents.

**COUNT I: INFRINGEMENT OF THE ‘651 PATENT**

25. Versata incorporates the foregoing paragraphs as if fully set forth here.

26. Toyota has been and is now directly infringing and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the ‘651 patent in the State of Texas, in this judicial district, and elsewhere within the United States by, among other things, making, using, licensing, selling, offering for sale, or importing software, including Toyota’s “Build your Toyota” functionality available through Toyota’s website as well as related services covered by one or more claims of the ‘651 patent, all to the injury of Versata.

27. Toyota’s acts of infringement have been willful, deliberate, and in reckless disregard of Versata’s patent rights, and will continue unless permanently enjoined by this Court.

28. Versata has been damaged by Toyota’s infringement of the ‘651 patent in an amount to be determined at trial, and has suffered and will continue to suffer irreparable loss and injury unless Toyota is permanently enjoined from infringing the ‘651 patent.

**COUNT II: INFRINGEMENT OF THE ‘308 PATENT**

29. Versata incorporates the foregoing paragraphs as if fully set forth here.

30. Toyota has been and is now directly infringing and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the ‘308 patent in the State of Texas, in this judicial district, and elsewhere within the United States by, among other things, making, using, licensing, selling, offering for sale, or importing software, including Toyota’s “Build your Toyota” functionality available through Toyota’s website as well as related services covered by one or more claims of the ‘308 patent, all to the injury of Versata.

31. In addition, Toyota has been and is now directly infringing and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the ‘308

patent within the United States by, among other things, making, using, licensing, selling, offering for sale, or importing software, including ThinkDesign Suite and related services covered by one or more claims of the '308 patent, all to the injury of Versata.

32. Toyota's acts of infringement have been willful, deliberate, and in reckless disregard of Versata's patent rights, and will continue unless permanently enjoined by this Court.

33. Versata has been damaged by Toyota's infringement of the '308 patent in an amount to be determined at trial, and has suffered and will continue to suffer irreparable loss and injury unless Toyota is permanently enjoined from infringing the '308 patent.

### **COUNT III: INFRINGEMENT OF THE '294 PATENT**

34. Versata incorporates the foregoing paragraphs as if fully set forth here.

35. Toyota has been and is now directly infringing and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '294 patent in the State of Texas, in this judicial district, and elsewhere within the United States by, among other things, making, using, licensing, selling, offering for sale, or importing software, including Toyota's "Build your Toyota" functionality available through Toyota's website as well as related services covered by one or more claims of the '294 patent, all to the injury of Versata.

36. In addition, Toyota has been and is now directly infringing and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '294 patent within the United States by, among other things, making, using, licensing, selling, offering for sale, or importing software, including ThinkDesign Suite and related services covered by one or more claims of the '294 patent, all to the injury of Versata.

37. Toyota's acts of infringement have been willful, deliberate, and in reckless disregard of Versata's patent rights, and will continue unless permanently enjoined by this Court.

38. Versata has been damaged by Toyota's infringement of the '294 patent in an amount to be determined at trial, and has suffered and will continue to suffer irreparable loss and injury unless Toyota is permanently enjoined from infringing the '294 patent.

**COUNT IV: INFRINGEMENT OF THE '335 PATENT**

39. Versata incorporates the foregoing paragraphs as if fully set forth here.

40. Toyota has been and is now directly infringing and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '335 patent within the United States by, among other things, making, using, licensing, selling, offering for sale, or importing software, including ThinkDesign Suite and related services covered by one or more claims of the '335 patent, all to the injury of Versata.

41. Toyota's acts of infringement have been willful, deliberate, and in reckless disregard of Versata's patent rights, and will continue unless permanently enjoined by this Court.

42. Versata has been damaged by Toyota's infringement of the '335 patent in an amount to be determined at trial, and has suffered and will continue to suffer irreparable loss and injury unless Toyota is permanently enjoined from infringing the '335 patent.

**COUNT V: INFRINGEMENT OF THE '583 PATENT**

43. Versata incorporates the foregoing paragraphs as if fully set forth here.

44. Toyota has been and is now directly infringing and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '583 patent within the United States by, among other things, making, using, licensing, selling, offering for sale, or importing software, including ThinkDesign Suite and related services covered by one or more claims of the '583 patent, all to the injury of Versata.



45. Toyota's acts of infringement have been willful, deliberate, and in reckless disregard of Versata's patent rights, and will continue unless permanently enjoined by this Court.

46. Versata has been damaged by Toyota's infringement of the '583 patent in an amount to be determined at trial, and has suffered and will continue to suffer irreparable loss and injury unless Toyota is permanently enjoined from infringing the '583 patent.

#### **COUNT VI: INFRINGEMENT OF THE '919 PATENT**

47. Versata incorporates the foregoing paragraphs as if fully set forth here.

48. Toyota has been and is now directly infringing and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '919 patent in the State of Texas, in this judicial district, and elsewhere within the United States by, among other things, making, using, licensing, selling, offering for sale, or importing software, including Toyota's "Build your Toyota" functionality available through Toyota's website as well as related services covered by one or more claims of the '919 patent, all to the injury of Versata.

49. Toyota's acts of infringement have been willful, deliberate, and in reckless disregard of Versata's patent rights, and will continue unless permanently enjoined by this Court.

50. Versata has been damaged by Toyota's infringement of the '919 patent in an amount to be determined at trial, and has suffered and will continue to suffer irreparable loss and injury unless Toyota is permanently enjoined from infringing the '919 patent.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs Versata Software, Inc., Versata Development Group, Inc. pray for the following relief against Defendants Toyota Motor Corporation, Toyota Caelum, Inc., Toyota Caelum USA, Inc., Toyota Motor Sales, U.S.A., Inc., Marshall Import Automotive, L.P.,

doing business as Marshall Toyota and Marshall Scion, Marshall Import Automotive GP, Inc., and Eddie Robbins, Inc., doing business as Toyota of Longview and Scion of Longview.

A. A judgment in favor of Versata that Toyota has infringed, directly and indirectly by way of inducing infringement and/or contributing to the infringement of Versata's '651, '308, '294, '335, '583, and '919 patents;

B. A permanent injunction, enjoining Toyota along with its officers, directors, agents, servants, employees, affiliates, divisions, branches, subsidiaries, and parents from infringing, inducing the infringement of, or contributing to the infringement of Versata's '651, '308, '294, '335, '583, and '919 patents;

C. A judgment and order requiring Toyota to pay Versata damage for Toyota's infringement of Versata's '651, '308, '294, '335, '583, and '919 patents, together with interest (both pre- and post-judgment), costs and disbursements as fixed by this Court under 35 U.S.C. § 284;

D. A judgment and order finding Toyota's infringement willful and awarding treble the amount of damages and losses sustained by Versata as a result of Toyota's infringement under 35 U.S.C. § 284;

E. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Versata its reasonable attorneys' fees; and

F. Such other and further relief in law or in equity to which Versata may be justly entitled.

#### **DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury of any and all issues triable of right before a jury.

Respectfully submitted,

AHMAD, ZAVITSANOS, ANAIPAKOS, ALAVI & MENSING, P.C.

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